

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Dec 15 2 21 PM '05

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In the Matter of:

Telephone Number Portability

Sprint Local Telephone Companies

Petition for Waiver

CC Docket No. 95-116

ORDER

Adopted: December 13, 2004

Released: December 13, 2004

By the Chief, Wireline Competition Bureau:

1. The Sprint Local Telephone Companies (Sprint) seek a waiver of the Commission's local number portability (LNP) requirements to enable Sprint to extend its intermodal LNP end-user charge for one month at 30 cents upon the expiration of its current 47-cent charge.¹ Due to unique circumstances, we find that a waiver here is warranted and allow Sprint to correct an inadvertent, computational error of a ministerial nature that it made in developing its intermodal LNP charge. To achieve the relief that Sprint desires, we waive the provisions of the *BellSouth Waiver Order* that require intermodal LNP end-user charges to be "levelized" over a recovery period set by the carrier and established in the tariff review process.²

2. In accordance with the *BellSouth Waiver Order*, Sprint proposed a new, "levelized" LNP end-user charge to recover its eligible costs of implementing intermodal LNP when its original LNP end-user charge sunset.³ Sprint's intermodal LNP tariff went into effect July 16, 2004, under which it would assess a 47-cent end-user charge for five months.⁴ Sprint asserts that when it reviewed its first month's billing of this charge, it "realized that a ministerial error had occurred in the rate computation that supported its tariff filing."⁵ This rate computation, according to Sprint, "erroneously stated its number of ISDN-PRI

¹ Telephone Number Portability, CC Docket No. 95-116, Sprint Local Telephone Companies Petition for Waiver (filed Nov. 2, 2004) (Sprint Petition).

² Telephone Number Portability, *BellSouth Corporation Petition for Declaratory Ruling and/or Waiver*, CC Docket No. 95-116, Order, 19 FCC Rcd 6800, 6809, para. 18 (2004) (*BellSouth Waiver Order*). "Intermodal" LNP refers to porting between wireline and wireless carriers (i.e., porting a number from a wireline carrier to a wireless carrier or porting a number from a wireless carrier to a wireline carrier). *Id.* at 6800 n.1.

³ *Id.* at 6809, para. 17.

⁴ Sprint Tariff F.C.C. No. 3, Transmittal No. 243, 5th Revised Page 4-18 (July 16, 2004) (Sprint Tariff).

⁵ Sprint Petition at 1. Sprint further explains that as soon as it received the revenue from the first month of the LNP end-user charge, it realized that there was a shortfall and immediately discovered the rate computation error upon investigation. Letter from Jeff Lindsey, Director-Federal Regulatory Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116 at 2 (filed Dec. 7, 2004) (Sprint *Ex Parte* Letter).

demand quantities.”⁶ Sprint explains that it inadvertently used ISDN-PRI voice grade equivalents (B channels) instead of ISDN-PRI primary lines in calculating its demand quantity, causing an overstated demand that resulted in an understated rate.⁷ Sprint further asserts that, when it billed this rate to end-users, it used the correct number of ISDN-PRI lines, consistent with the Commission’s rules.⁸ As a result, Sprint asserts that it recovered less revenue than it would have if it had properly calculated its original estimation of demand quantity.⁹ Sprint, therefore, seeks to correct the number of ISDN-PRI units in its rate computation by using ISDN-PRI lines instead of channels.¹⁰

3. In the *BellSouth Waiver Order*, the Commission allowed incumbent local exchange carriers (LECs) like Sprint to assess a monthly intermodal LNP end-user charge but required this charge to be levelized over a recovery period set by the carrier and established in the tariff review process.¹¹ The Commission anticipated that, once established, the recovery period would not be extended and that the monthly charge would not change.¹² Sprint, therefore, requires a waiver of these requirements to achieve the relief it desires -- to correct its rate computation and thus to extend its intermodal LNP end-user charge for one month at 30 cents (resulting in a charge that is not levelized).¹³ According to Sprint, this would enable it to make up its cost recovery deficit and complete the recovery of costs that supported its intermodal LNP tariff filing.¹⁴ No parties filed comments in opposition to Sprint’s petition for a waiver.

4. Although waivers are not routinely granted, the Commission may waive any provision of its rules or orders if “good cause” is shown.¹⁵ Thus, a waiver may be granted when the relief requested would not undermine the policy objective of the rule or order in question, special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁶ For the reasons discussed below, we find that good cause exists to grant Sprint a waiver in this case.

⁶ Sprint Petition at 2.

⁷ *Id.* (“[T]he rate computation overstated the number of assessable ISDN-PRI units by a factor of nearly 22.”); *id.* at n.10 (“The original ISDN-PRI demand forecast, including the appropriate ISDN-PRI equivalency ratio, was 5,301,238. The correct ISDN-PRI demand forecast is 244,072, resulting in an original demand forecast overstatement of 5,057,166 units.”).

⁸ Sprint *Ex Parte* Letter at 2; see 47 C.F.R. § 52.33(a)(1)(i)(B).

⁹ Sprint *Ex Parte* Letter at 2.

¹⁰ Sprint Petition at 2.

¹¹ *BellSouth Waiver Order*, 19 FCC Rcd at 6809, para. 18 (stating that LNP end-user charges are to be “levelized” over a recovery period that may vary by carrier, depending upon its own costs and circumstances, and tariffs establishing these charges would be reviewed by the Commission in the tariffing process).

¹² See *id.*

¹³ Sprint requests a waiver of section 52.33(a)(1) of the Commission’s rules. Sprint Petition at 1; 47 C.F.R. § 52.33(a)(1). That rule, however, provides for the recovery of monthly LNP end-user charges over a five-year period and was previously waived for Sprint and other LECs, permitting them to implement wireless (intermodal) LNP end-user charges. *BellSouth Waiver Order*, 19 FCC Rcd at 6805-06, para. 10.

¹⁴ Sprint Petition at 2. Sprint asserts that, without a waiver, it would under-recover about \$2.1 million of the \$18.8 million in costs that were included in the cost support study filed with its intermodal LNP tariff. Sprint *Ex Parte* Letter at 2.

¹⁵ See 47 C.F.R. § 1.3; *US West Petition for Waiver of the Tariff Review Plan Rules*, Memorandum Opinion and Order, 12 FCC Rcd 8343, 8346, para. 10 (CCB CPD 1997) (*US West Petition for Waiver*).

¹⁶ *US West Petition for Waiver*, 12 FCC Rcd at 8346, para. 10 (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

5. We believe that permitting Sprint to extend its intermodal LNP end-user charge for one month at 30 cents does not undermine the policy objectives underlying the Commission's requirements governing LNP cost recovery from end users.¹⁷ The factual circumstances presented here are unique. In calculating its cost recovery for implementing intermodal LNP, Sprint inadvertently used the number of channels on ISDN-PRI lines instead of the number of lines to figure its demand quantity, causing an overstated demand that resulted in an incorrect rate.¹⁸ Sprint, however, applied this rate that was incorrectly based on channels to the correct number of ISDN-PRI lines for billing purposes, resulting in its under-recovery.¹⁹ We have examined Sprint's intermodal LNP tariff cost support study and verified its error.²⁰ In addition, Sprint promptly brought the problem to our attention when the computational error became apparent after the first month's billing. All evidence indicates that Sprint made a calculation error at the time it initially determined its line growth. It is not seeking to modify its initial underlying determination based on subsequent developments.

6. In the *Cost Recovery Order*, the Commission recognized a narrow exception to the general rule that incumbent LECs may not increase LNP end-user charges.²¹ There the Commission stated that the levelized end-user charge established in the tariff review process could not be increased unless the incumbent LEC "can show that the end-user charge was not reasonable *based on the information available at the time it was initially set.*"²² We believe that Sprint falls within this exception because the correct number of ISDN-PRI lines was known at the time of Sprint's tariff filing, but Sprint inadvertently used the wrong number to derive an end-user rate that was, as a result, incorrect. We find that, in Sprint's particular circumstances, granting a waiver does not diminish our ability to balance carrier and consumer policy interests properly in the assessment of LNP end-user charges, and that in these particular circumstances, Sprint should be allowed to correct a basic computational error.

7. We also find that the public interest would be served by granting Sprint a waiver in these circumstances. Sprint does not belatedly introduce any new or previously unknown data here for the first time. Sprint simply seeks to correct an unintentional error, which is solely mathematical and ministerial in nature, by inserting the number of lines instead of the number of channels in its demand computation.²³ The Commission has held that the public interest is served by correcting inadvertent errors of a ministerial

¹⁷ See *BellSouth Waiver Order*, 19 FCC Rcd at 6809, para. 18 (citing *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11777, para. 144 (1998) (*Cost Recovery Order*), *aff'd*, *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002)).

¹⁸ Sprint Petition at 2.

¹⁹ Sprint *Ex Parte* Letter at 2.

²⁰ See Sprint Tariff, Confidential Cost Support at 11.

²¹ *Cost Recovery Order*, 13 FCC Rcd at 11777, para. 144.

²² *Id.* (emphasis added).

²³ Sprint Petition at 4. "A ministerial error is defined as an error involving arithmetic functions, clerical errors and any other type of unintentional error." *Robert O. Benz, Authority to Construct a 931.6625 MHz Commercial Mobile Radio Service Facility Under Call Sign KNLM474*, File No. 28139-CD-P/ML-90, Order, 13 FCC Rcd 2898, 2900, para. 5 (1998) (*Benz Order*) (citing *Zenith Electronics Corporation v. United States*, 884 F.2d 556, 561 (Fed. Cir. 1989)). We note that courts have long recognized the authority of administrative agencies to correct ministerial, inadvertent errors. See *Benz Order*, 13 FCC Rcd at 2900, para. 5 (citing *American Trucking Ass'n v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958)).

nature.²⁴ Based on the totality of circumstances in this case, the public interest weighs in favor of allowing Sprint to correct the effect of its inadvertent and ministerial computational error.

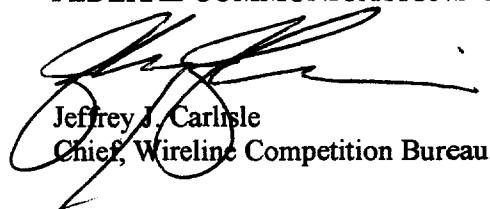
8. In addition, the impact on end users will be relatively minor. Should Sprint's request for a waiver be granted, the additional month's end-user charge will be billed in the cycle immediately following the expiration of the current charge.²⁵ Customers will not experience a situation where imposition of the charge was stopped or interrupted for a period before it was imposed again. The charge will continue only for one month longer than originally planned. As a result, we agree with Sprint that its request for a waiver would correct its intermodal LNP cost recovery deficit with a minimal impact on consumers.²⁶

9. In conclusion, we believe Sprint demonstrates that a waiver is warranted of the requirements in paragraph 18 of the *BellSouth Waiver Order* that do not allow incumbent LECs to extend the intermodal LNP end-user charge recovery period or otherwise increase the charge once it is established.²⁷ We, therefore, grant Sprint a waiver to allow it to extend its intermodal LNP end-user charge for one month at 30 cents upon the expiration of its current 47-cent charge.

10. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 2, 4(i), 201-205, 215, 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251, 332, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, we GRANT a waiver of the requirements established in paragraph 18 of the *BellSouth Waiver Order* to the extent necessary to allow Sprint to extend its intermodal LNP end-user charge recovery period for one month at a rate of 30 cents.

11. IT IS FURTHER ORDERED that Sprint may file tariff revisions implementing the LNP rate element in response to this order to be effective on not less than three days' notice. For this purpose, we waive section 61.58 of the Commission's rules, 47 C.F.R. § 61.58. Sprint should cite the "DA" number on the instant order as authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION



Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

²⁴ See *State or Moot Docketed Proceedings, 1993 Annual Access Tariff Filings Phase 1*, CC Docket No. 93-193, Order, 19 FCC Rcd 2527, 2537, para. 26 (2004).

²⁵ Sprint Petition at 4-5. We note that the charge in this final, additional month would be reduced from 47 to 30 cents. *Id.* at 5.

²⁶ *Id.* at 4-5.

²⁷ *BellSouth Waiver Order*, 19 FCC Rcd at 6809, para. 18.